

ATTACHMENT 15

VERIZON - MARYLAND

SURREBUTTAL TESTIMONY OF ROSEMARIE CLAYTON

CASE NO. 8927

October 22, 2002

1 **SURREBUTTAL TESTIMONY OF ROSEMARIE CLAYTON**

2

3 **I. INTRODUCTION**

4

5 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS, AND TITLE.**

6 A. My name is Rosemarie Clayton. I am the same Rosemarie Clayton that filed testimony
7 on September 24, 2002. My business address is 2107 Wilson Blvd., Arlington, Virginia
8 22201. I am employed by Verizon Services Group as a Senior Product Manager for
9 xDSL and Line Sharing. I am appearing on behalf of Verizon Maryland Inc. ("Verizon"
10 or "Verizon Maryland") in this proceeding.

11

12 **Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT POSITION?**

13 A. As I explained in my September 24th rebuttal testimony, functionally I am Senior
14 Product Manager for digital unbundled network elements ("UNEs"), responsible for
15 product roll-out and life cycle management to ensure that digital UNEs are provided in
16 accordance with the requirements of (1) the Telecommunications Act of 1996 (the
17 "Act"), (2) the Federal Communication Commission's ("FCC's") December 1999 *Line*
18 *Sharing Order*,¹ and (3) the FCC's January 2001 *Line Sharing Reconsideration*

¹ Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"), *vacated and remanded*, *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *partial stay granted* (D.C. Cir. Sept. 4, 2002).

1 Order.² My responsibilities also include CLEC contract negotiations and testifying on
2 related policy issues before regulatory bodies.

3
4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of my testimony is to rebut the misstatements and misrepresentations
6 included in the testimony of Ms. Sherry Lichtenberg on behalf of WorldCom, Inc.
7 ("WorldCom"). I will explain that Ms. Lichtenberg's testimony is wrong as a matter of
8 fact, policy, and law. Ms. Lichtenberg has provided no evidence to justify her request
9 that this Commission greatly expand regulation in a highly competitive market -- a
10 market that has thrived without regulatory interference. Indeed, in contrast to Ms.
11 Lichtenberg's unsupported assertions about the significance of Verizon's DSL-based
12 Internet access service to consumers, earlier this year, WorldCom proclaimed that "we
13 haven't seen a huge market demand for DSL," and that the "RBOCs have had little
14 success with it." According to WorldCom, "There just isn't huge consumer demand [for
15 DSL]."³ WorldCom's own statements on this point thus undermine the core premise of
16 its argument here. Its own public statements show that WorldCom itself recognizes that
17 consumers have many alternatives for Internet access services -- including cable modem
18 service, which the majority of consumers use to obtain high-speed Internet access. Thus,
19 Verizon's business decision to offer DSL only as an overlay service to Verizon voice

² Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 2101 (2001) ("*Line Sharing Reconsideration Order*").

³ *MCI Fires Back at Bells with Local Service Play*, Telephony, Apr. 22, 2002 (emphasis added).

1 service does not “chill[]” competition, as Ms. Lichtenberg alleges (at page 3 of her
2 testimony). In this regard, I note that WorldCom itself apparently offers some services --
3 including local voice service -- only as an overlay service to its long-distance customers.
4 That fact demonstrates that, in competitive markets, companies frequently choose to offer
5 certain services in packages, and that such packaging does not indicate the existence of
6 any anticompetitive effect.

7
8 Ms. Lichtenberg’s arguments are all the more unpersuasive because she provides no
9 explanation as to how this Commission could properly regulate interstate
10 telecommunications services such as DSL transport and interstate information services
11 such as DSL-based high-speed Internet access.

12
13 **II. WORLDCOM HAS NOT JUSTIFIED ITS REQUEST FOR A SIGNIFICANT**
14 **EXPANSION OF REGULATION TO A HIGHLY COMPETITIVE MARKET**

15
16 **Q. IS THE ISSUE RAISED BY WORLDCOM’S MS. LICHTENBERG THE SAME**
17 **ONE THAT HAS BEEN RAISED BY CLOSECALL AMERICA (“CLOSECALL”)**
18 **IN THIS PROCEEDING?**

19
20 **A.** No, it is not. WorldCom is raising a different question than CloseCall, and it is seeking
21 to expand this proceeding to consider significant new regulatory burdens that even
22 CloseCall has not requested.

1 **Q. COULD YOU PLEASE EXPLAIN THE DIFFERENCE BETWEEN THESE**
2 **ISSUES?**

3
4 A. Absolutely. CloseCall's arguments relate to Verizon Maryland's willingness to provide
5 DSL transport service over resold voice lines. As I have explained in responding to Mr.
6 Mazerski's testimony on behalf of CloseCall, Verizon will in fact resell its retail DSL
7 transport service over resold voice lines. CLEC resellers such as CloseCall may then
8 partner with an ISP or offer their own Internet access service to offer high-speed Internet
9 access. Indeed, several CLECs in Maryland, including Stick Dog, take advantage of this
10 resold DSL offering right now. Accordingly, although there are other important legal and
11 regulatory problems with CloseCall's claim -- problems that Dr. William Taylor and I
12 discussed in prior testimony -- CloseCall's claim can be resolved solely on the basis that
13 Verizon already offers resold DSL transport on resold voice lines in Maryland.

14
15 In contrast, Ms. Lichtenberg's arguments on behalf of WorldCom have nothing to do
16 with the provision of DSL transport or DSL-based Internet access over resold voice lines.
17 Rather, as she states throughout her testimony, Ms. Lichtenberg is seeking to expand this
18 proceeding to address Verizon Maryland's provision of DSL-based Internet access over
19 lines that CLECs serve using the "Unbundled Network Element Platform" or "UNE-P."
20 In that context, Verizon will not provide DSL transport on the same line that the CLEC
21 uses for voice service, although a customer could move his or her DSL-based Internet
22 access service to another line and continue to receive service.

1 **Q. DOES VERIZON’S POLICY MEAN THAT CONSUMERS CANNOT OBTAIN**
2 **LINE-SHARED DSL-BASED INTERNET ACCESS IF THEY CHOOSE A CLEC**
3 **FOR VOICE SERVICE?**

4
5 **A.** Not at all. Current FCC rules address this precise issue. They require Verizon to permit
6 what is known as “line splitting.” Line splitting allows two competitors to partner to
7 provide voice and high-speed data services on the same line. Accordingly, even if
8 WorldCom chooses not to offer DSL-based services, it can partner with another carrier to
9 provide both voice and data to a customer on the same line. Verizon offers line splitting
10 in Maryland in accordance with all legal requirements.

11
12 **Q. HAVE CLECS HAD SIGNIFICANT INPUT INTO THE DEVELOPMENT OF**
13 **VERIZON’S LINE-SPLITTING OFFERING?**

14
15 **A.** Yes. Verizon developed its procedures for ordering and provisioning line splitting
16 through a collaborative process supervised by the New York Public Service Commission
17 (“PSC”). Accordingly, those procedures are the product of significant CLEC input and
18 reflect CLEC concerns and priorities. WorldCom participated in these collaborative
19 sessions. Meeting minutes from these collaborative sessions were regularly developed
20 and distributed, and specific work documents, such as ordering forms, were included in
21 industry notifications and on the CLEC web site. These same collaborative sessions
22 discussed how line sharing could be migrated to line-splitting and how a UNE-P
23 configuration could be changed, with work activity, to a line splitting configuration.

1 CLEC relationships and procedures were discussed and developed in great detail and
2 CLECs had input into processes that would enable them to enter into working
3 relationships with one another for the provision of voice and data services to end users.
4

5 **Q. DO CLECS HAVE ADDITIONAL OPTIONS BESIDES LINE SPLITTING?**

6 A. Yes, they do. First, CLECs can and do provide both voice and data themselves over the
7 same unbundled DSL-capable loop. Although WorldCom has apparently made a
8 business decision not to offer line-shared DSL -- because, as quoted above, it believes
9 that carriers haven't had "success" with DSL and there isn't "huge customer demand"--
10 other CLECs have made different decisions and offer a package of voice and data
11 services on the same DSL-capable line.
12

13 Second, CLECs may choose to offer resold voice service instead of UNE-P, in which
14 case Verizon will resell its retail DSL transport service. Indeed, Ms. Lichtenberg
15 acknowledges that this is a possibility in her testimony (p. 7).
16

17 Third, at the CLECs' request, Verizon developed and implemented a process that would
18 allow CLECs with existing UNE-P type arrangements, to change from the UNE-P to a
19 line-splitting arrangement. CLECs insisted on Verizon making this option available and
20 stated that volumes would be worth the work effort put forth. To date, CLECs have not
21 taken advantage of this option even though the work was implemented in ordering,
22 provisioning, and billing systems.

1 **Q. BUT DOESN'T MS. LICHTENBERG ALLEGE (P. 7) THAT RESALE IS NOT A**
2 **PRACTICAL ALTERNATIVE FOR ENTERING LOCAL VOICE MARKETS?**

3
4 A. She does say that, but she provides no concrete evidence, and CloseCall's experience
5 itself demonstrates that this is not true. My understanding is that CloseCall is a small
6 company that has only been in existence for a few years. Nevertheless, it has stated in
7 this case that it already has 13,000 resale customers in Maryland. That fact demonstrates
8 that, contrary to Ms. Lichtenberg's unsupported statement, resale is a "viable option in
9 the real world" and with the resale options currently available from Verizon.

10
11 **Q. DO CONSUMERS HAVE OTHER OPTIONS FOR HIGH-SPEED INTERNET**
12 **SERVICE?**

13
14 A. Yes. In fact, the majority of consumers do not rely on DSL-based service for high-speed
15 Internet access. They use cable modem service or other alternatives, such as satellite and
16 wireless. As Dr. Taylor explained in his September 24, 2002 rebuttal testimony (p. 30),
17 69% of "broadband" or high-speed access lines in Maryland rely on cable modems or
18 other technology, while only 31% employ DSL. That means that customers are more
19 than twice as likely to obtain high-speed access through a technology other than DSL. As
20 Dr. Taylor also explained, only about one Maryland household out of 100 has DSL
21 service and cannot switch to cable modem service (p. 31). As discussed above, even for
22 that 1%, other DSL-based options can be employed. There is thus no basis for Ms.
23 Lichtenberg's suggestion that (pp. 4-5) customers cannot switch broadband providers.

1
2 **Q. HOW DO YOU RESPOND TO MS. LICHTENBERG’S ASSERTION (P. 6) THAT**
3 **THESE COMPETITIVE ALTERNATIVES ARE SOMEHOW IRRELEVANT TO**
4 **THIS ISSUE?**

5
6 A. Ms. Lichtenberg’s statement is baffling. Ms. Lichtenberg’s argument appears to be based
7 solely on the fact that Verizon offers DSL as an overlay to voice service and not as a
8 stand-alone offering. According to Ms. Lichtenberg, that fact by itself demonstrates that
9 Verizon does not feel “competitive pressure on the broadband side” (p. 6).

10
11 Her reasoning is incorrect. As Dr. Taylor has demonstrated in detail (pp. 10-11), offering
12 some services only as overlays to other services, and not on a stand-alone basis, is fully
13 consistent with a competitive market. In competitive environments, telecommunications
14 companies frequently decline to offer access to some products (such as vertical services)
15 on a “naked” or stand-alone basis. Dr. Taylor demonstrates in his testimony that this
16 commonplace fact does not show that a company has “leverage” or market power, but
17 rather reflects legitimate attempts to be cost-effective and compete in a competitive
18 market.

1 **Q. ARE YOU AWARE OF WHETHER WORLDCOM ITSELF DECLINES TO**
2 **OFFER SOME SERVICES ON A “STAND-ALONE” BASIS IN MARYLAND?**

3
4 A. Yes, it appears that it does. Ms. Lichtenberg (p. 2) has stated that WorldCom has entered
5 the Maryland local exchange market through its “The Neighborhood” plan. As Ms.
6 Lichtenberg states (p. 2), and WorldCom’s web site confirms, this is a “bundled offering
7 of unlimited local and toll calling” (emphasis added). Simply put, WorldCom apparently
8 offers the local telephone service only to its long-distance voice customers. I doubt that
9 WorldCom would conclude that this fact indicates that it can “leverage” its local voice
10 service in some improper way or that it has market power in the local voice market.
11 Rather, WorldCom apparently believes that this is a cost-effective way to compete in a
12 competitive market. The same is true of Verizon.

13
14 **Q. HOW HAS THE FCC ADDRESSED THE ISSUES RAISED BY WORLDCOM**
15 **HERE?**

16 A. Although, in other respects, the FCC has imposed significant requirements on incumbent
17 LEC DSL services, it has specifically and repeatedly declined to impose the same broad
18 and unnecessary requirements that WorldCom is seeking here.⁴ In so doing, the FCC has
19 rejected the contention that the policies at issue here are “discriminatory,” as Ms.

⁴ *Line Sharing Reconsideration Order* ¶¶ 16-19; Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, ¶ 310 (2000) (“*Texas Order*”); Memorandum Opinion and Order, *Joint Application by BellSouth Corp., et al, for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, 17 FCC Rcd 9018, ¶ 157 (2002) (“*Georgia/Louisiana Order*”).

1 Lichtenberg alleges (pp. 5-6). For instance, in authorizing Southwestern Bell to provide
2 long-distance service in Texas, the FCC rejected the claim that it “should deny this
3 application on the basis of [Southwestern Bell’s] decision to deny its xDSL service to
4 customers who choose to obtain their voice service from a competitor that is using the
5 UNE-P.” *Texas Order* ¶ 330. The FCC stressed, among other things, the right of CLECs
6 to engage in line splitting, and concluded that, contrary to WorldCom’s claim here, “we
7 do not find [Southwestern Bell’s] conduct to be discriminatory.”⁵ The FCC repeated that
8 conclusion in its recent order permitting BellSouth to offer long distance in Georgia and
9 Louisiana.⁶

10
11 **Q. IS THE FCC CURRENTLY CONSIDERING ISSUES RELEVANT TO THIS**
12 **CASE?**

13
14 A. Yes, it is. In its Notice of Proposed Rulemaking in the *Triennial Review* proceeding, the
15 FCC expressly sought comment on whether to mandate access to a “low-frequency
16 portion of the loop” UNE, which would mean that the CLEC would access only the voice
17 spectrum and Verizon would maintain control of the data spectrum.⁷

⁵ *Texas Order* ¶ 330.

⁶ *Georgia/Louisiana Order* ¶ 310.

⁷ Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781, 22806, ¶ 54 & n.121 (2001) (“*Triennial Review*”).

1 **Q. DOES THE FCC PROCEEDING PROVIDE A MORE APPROPRIATE FORUM**
2 **TO ADDRESS THIS ISSUE?**

3
4 A. Yes, it does. Not only does this case involve interstate services that are within the
5 jurisdiction of the FCC, not this Commission, but also, if the FCC declines to require
6 access to a “low frequency portion of the loop” UNE, that would resolve this case. The
7 FCC’s decision that CLECs are not entitled to such a UNE would be dispositive of this
8 case, and this Commission could not second-guess that decision.

9
10 It is all the more appropriate to await the FCC’s decision since FCC Chairman Powell has
11 repeatedly pledged to complete the *Triennial Review* proceeding this year.

12
13 **Q: WOULD IT HARM CONSUMERS TO REQUIRE THAT VERIZON CONTINUE**
14 **TO OFFER DSL-BASED INTERNET ACCESS SERVICE OVER UNE-P LINES?**

15
16 A: Yes, it would cause consumers significant harm. As Dr. Taylor has explained in detail
17 (pp. 3-5), consumers will be hurt in several significant ways, including reduced
18 investment in new and innovative technologies and an artificial skewing of the market in
19 favor of some competitors (who remain unregulated) and against Verizon.

20
21 Dr. Taylor’s conclusions align perfectly with the D.C. Circuit’s recent decision on
22 regulation of incumbent LEC-provided DSL. The D.C. Circuit reasoned that, given the
23 “robust competition” and the “dominance of cable” in the broadband market, it was

1 “unreasonable” for the FCC to impose regulatory obligations on incumbent LECs’
2 provision of DSL. Such regulation “inflict[s] significant costs on the economy,”
3 including “disincentives to research and development,” and involves a “naked disregard”
4 of the competitive context in which most customers receive service through cable modem
5 and other technologies, not DSL.⁸ The D.C. Circuit’s analysis applies fully to this case.
6

7 **Q: IS MS. LICHTENBERG CORRECT THAT, EVEN IF CONSUMERS HAVE**
8 **OTHER ALTERNATIVES, THE TRANSFER FROM VERIZON TO ANOTHER**
9 **PROVIDER WILL CAUSE DISRUPTION (PP. 4-5)?**
10

11 A: No, she is not. To be sure, there will always be some transition when a customer changes
12 data providers, but there is no reason that this change should be especially disruptive.
13 However, as both Dr. Taylor and I have discussed, consumers have many high-speed
14 Internet access options. There is no reason that consumers cannot reasonably transition
15 from a Verizon service to one of these options. As I discussed in my prior testimony (pp.
16 12-13), Verizon has procedures in place to ensure that this transition is smooth and that
17 end users do not lose DSL service without notice. A CLEC should simply inform
18 customers of the effect of the change in voice providers on Verizon DSL and of the need
19 to cancel the existing data service or move it to another line in order to change providers
20 on the voice line. The CLEC can then give the customers sufficient time to transition to
21 any of the other broadband options before the customers change voice service.

⁸ *USTA v. FCC*, 290 F.3d 415, 429-30 (D.C. Cir. 2002) (emphasis added).

1 **III. THIS COMMISSION LACKS AUTHORITY TO IMPOSE THE KIND OF**
2 **REGULATION THAT WORLDCOM IS SEEKING HERE**

3
4 **Q. DOES THIS COMMISSION HAVE AUTHORITY TO IMPOSE THE KIND OF**
5 **REGULATION THAT WORLDCOM SEEKS HERE?**

6
7 A. No, it does not. As Ms. Lichtenberg's testimony (p. 8) makes clear, WorldCom is asking
8 this Commission to regulate Verizon's provision of "DSL service," by which Ms.
9 Lichtenberg appears to mean DSL-based high-speed Internet access. As I explained in
10 my September 24, 2002 testimony (pp. 13-15), that service is an interstate information
11 service that this Commission lacks authority to regulate.

12
13 **Q. DOES VERIZON MARYLAND PROVIDE THIS INTERSTATE INFORMATION**
14 **SERVICE?**

15
16 A. No, it does not.

17
18 **Q: WHO DOES PROVIDE IT?**

19 A: Verizon Internet Services, Inc. ("VIS"), which is not a subsidiary or a parent of Verizon
20 Maryland.

1 **Q: DOES VIS PROVIDE TELECOMMUNICATIONS SERVICES IN MARYLAND?**

2 A: No, it does not. VIS is an information services provider that does not offer
3 telecommunication services anywhere.

4
5 **Q: DOES THIS COMMISSION HAVE AUTHORITY TO REGULATE JUST DSL**
6 **TRANSPORT USED TO PROVIDE INTERNET ACCESS?**

7
8 A: No, it does not. As I explained in my prior testimony, DSL transport is an interstate
9 service, and this Commission lacks authority over such services.

10
11 **Q: HAS WORLDCOM'S MS. LICHTENBERG ADDRESSED ANY OF THESE**
12 **JURISDICTIONAL LIMITATIONS?**

13
14 A: No, she has not.

15
16 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A: Yes, it does.